

ARTICLE VI

WORKSHARE

6.1. The Parties shall work toward the goal that the work to be performed under this Agreement shall be shared in a fair and reasonable manner to the maximum extent possible, consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project.

6.2. In the event that a Party considers that it has failed to obtain its fair and reasonable share of the work, that Party may raise the matter for discussion to the SC. The SC shall then use its best efforts to find an acceptable solution.

6.3. No requirement shall be imposed by either Party for work sharing or other industrial or commercial compensation in connection with this Agreement that is not in accordance with this Agreement.

ARTICLE VII

CONTRACTING PROVISIONS

7.1. The DOD (acting through the Department of the Navy) shall be responsible for Contracting for work on behalf of the Parties as set forth in Article II (Objectives) and Article III (Scope of Work) in accordance with U.S. Contracting laws, regulations and procedures.

7.2. The FMOD (acting through Bundesamt für Wehrtechnik und Beschaffung) will be the German alternate for contracting for work on behalf of the Parties as set forth in Article II (Objectives) and Article III (Scope of Work) in accordance with German laws, regulations and procedures. Such alternative arrangements shall be made only after consultation with the SC.

7.3. The respective Contracting Officer of the contracting agencies stated in paragraph 7.1. and 7.2. shall be the exclusive source for providing contractual direction and instructions to contractors.

7.4. The RAMPO shall be responsible for the coordination of activities relating to the Project, and shall cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The RAMPO shall review statements of work prior to the development of solicitations to insure that they are in accordance with this Agreement. In addition, the Contracting Officer shall keep the RAMPO advised of all financial arrangements with the prime Contractor.

7.5. The Contracting Officer shall negotiate to obtain the rights to use and disclose Project Information required by Article IX (Disclosure and Use of Project Information). The Contracting Officer shall insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article VI (Workshare), Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information), Article XII (Security) and Article XIII (Third Party Sales and Transfers). During the Contracting process, the Contracting Officer shall advise prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

7.6. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Article IX (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter shall be referred to the SC for resolution.

7.7. The Contracting Officer shall immediately advise the RAMPO of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible.

7.8. Upon agreement, and consistent with Article II (Objectives), a Party may contract for the unique national requirements of the other Party, as referenced in paragraph 5.4.3.

7.9. Upon request of the Contracting Agency, the Parties will provide quality assurance, inspection, and Contract audit services in connection with the placement of Contracts. These services will be provided by each Party through the normal contract administration agency serving the Contractors within each Party.

7.10. Audits will be performed on contracts/subcontracts with German industry; such audits will be conducted in accordance with German pricing law and regulations. The SC may waive this requirement.

ARTICLE VIII

PROJECT EQUIPMENT

8.1. Each Party may provide Project Equipment identified as being necessary for executing the Agreement to the other Party. Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to another Party shall be developed and maintained by the RAMPO and approved by the SC in accordance with Article IV (Management) prior to such transfers.

8.2. The receiving Party shall maintain any such Project Equipment in good order, repair, and operable condition and return the items in as good condition as received, normal wear and tear excepted unless the providing Party has authorized the Project Equipment to be expended or otherwise consumed in connection with the Project without reimbursement to the providing Party. The receiving Party shall pay the cost of damage (other than normal wear and tear) to or loss of Project Equipment.

8.3. The providing Party shall deliver Project Equipment to the receiving Party at a mutually agreed location. Possession of the Project Equipment shall pass from the providing Party to the receiving Party at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Party.

8.4. All Project Equipment that is transferred shall be used by the receiving Party only for the purposes of carrying out this Agreement, unless otherwise consented to in writing by the providing Party. In addition, in accordance with Article XIII (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Party.

8.5. Project Equipment transferred to one Party under this Agreement shall be returned to the providing Party prior to the termination or expiration of this Agreement.

8.6. Any Project Equipment which is jointly acquired on behalf of both Parties for use under this Agreement shall be disposed of during this Project or when the Project ceases, as agreed by the SC.

8.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Party in such Project Equipment to the other Party, or the sale of such equipment to a Third Party in accordance with Article XIII (Third Party Sales and Transfers) of this Agreement. The Parties shall share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this Agreement.

ARTICLE IX
DISCLOSURE AND USE OF PROJECT INFORMATION

9.1. General

Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Parties intend to acquire sufficient Project Information and rights to use such information to enable the production of the RAM Block 1 GMWS and Block 1 HAS Upgrade GMWS, and recognize that as a result they will receive an equal share of the results of the Project. Where necessary, the Parties shall use their best efforts, and support each other, to obtain on fair and reasonable terms, the rights to use for purposes of the Project, information subject to proprietary rights. The nature and amount of Project Information to be acquired shall be consistent with the objectives stated in Article II (Objectives), Article III (Scope of Work), and Article VII (Contracting Provisions).

9.2. Government Project Foreground Information

9.2.1. Disclosure: Project Foreground Information generated in whole or in part by a Party's military or civilian employees shall be disclosed without charge to both Parties.

9.2.2. Use: Each Party may use all Government Project Foreground Information without charge for Defense Purposes. The Party generating Government Project Foreground Information shall also retain its rights of use thereto. Any sale or other transfer to a Third Party shall be subject to the provisions of Article XIII (Third Party Sales and Transfers) of this Agreement.

9.3. Government Project Background Information

9.3.1. Disclosure: Each Party, upon request, shall disclose to the other Party any relevant Government Project Background Information generated by its military or civilian employees outside the scope of this Agreement, provided that:

9.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

9.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

9.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

9.3.2. Use: Government Project Background Information disclosed by one Party to the other may be used without charge by the other Party for Project Purposes only. The furnishing Party, however, shall retain all its rights with respect to such Project Background Information.

9.4. Contractor Project Foreground Information

9.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, shall be disclosed without charge to both Parties.

9.4.2. Use: Each Party may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Party. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information shall be subject to the provisions of Article XIII (Third Party Sales and Transfers) of this Agreement.

9.5. Contractor Project Background Information

9.5.1. Disclosure: Any relevant Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors or other entities under Contracts awarded by a Party outside the scope of this Agreement shall be made available to the other Party provided the following conditions are met:

9.5.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

9.5.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

9.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

9.5.2. Use: Project Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by the other Party for Project Purposes only. Such Project Background Information may be subject to further restrictions by holders of proprietary rights. The furnishing Party, however, shall retain all its rights with respect to such Project Background Information.

9.6. Alternative Uses of Project Information

- 9.6.1. Any Project Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this Agreement, unless otherwise consented to in writing by the providing Party.
- 9.6.2. The prior written consent of each Party shall be required for the use of Project Foreground Information for purposes other than those provided for in this Agreement.

9.7. Proprietary Project Information

- 9.7.1. All Project Information subject to proprietary interests shall be identified and marked, and it shall be handled as Controlled Unclassified Information.
- 9.7.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, shall apply to proprietary Project Information related to this Agreement.

9.8. Patents

- 9.8.1. Where a Party owns title to a Project Invention, or has the right to receive title to a Project Invention, that Party shall consult with the other Party regarding the filing of a Patent application for such Project Invention. The Party which has or receives title to such Project Invention shall, in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution.
- 9.8.2. The other Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 9.8.3. The other Party shall acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Party, throughout the world for Defense Purposes, any Project Invention.
- 9.8.4. Patent applications to be filed under this Agreement which contain Classified Information, shall be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents

Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.

- 9.8.5. Each Party shall notify the other Party of any Patent infringement claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in the same percentage as they share the full Financial Costs and Non-financial Costs of the Project. The Parties shall, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.

ARTICLE X

CONTROLLED UNCLASSIFIED INFORMATION

10.1. Except as otherwise provided in this Agreement or as authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

10.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in Article IX (Disclosure and Use of Project Information).

10.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1., and shall be subject to the provisions of Article XIII (Third Party Sales and Transfers).

10.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2., unless the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

10.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings shall be defined in the Project Security Instruction.

10.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 10.1.

10.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE XI

VISITS TO ESTABLISHMENTS

11.1. Each Party shall permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s), provided that the visit is authorized by both Parties and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2. All visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

11.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host country. Requests for visits shall bear the name of the Project.

11.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with recurring international visit procedures.

ARTICLE XII

SECURITY

12.1. All Classified Information or material provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between Germany and the United States of America, of 23 December 1960, amended 27 July 1982, and including the Industrial Security Annex thereto, of 16 April 1970, amended 11 September 1980 and 24 March 1982.

12.2. Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such Classified Information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

12.3. Each Party shall ensure in a manner consistent with its laws and regulations that information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraph 12.8; unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

12.3.1. The recipient shall not release the Classified Information to any government, national organization, or other entity of a Third Party without the prior written consent of the originating Party in accordance with the procedures set forth in Article XIII (Third Party Sales and Transfers).

12.3.2. The recipient shall not use the Classified Information for other than the purposes provided for in this Agreement.

12.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under this Agreement.

12.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Party of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.5. The PM shall prepare a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide shall describe the methods by which Project Information and material shall be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide shall be developed by the PM within three months after

this Agreement enters into force. They shall be reviewed and forwarded to the Parties' DSA for approval and shall be applicable to all government and Contractor personnel participating in the Project. The Classification Guide shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

12.6. The DSA of the Party in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or Subcontractor of any Classified Information received under this Agreement, the DSAs will:

12.6.1. Ensure that such Contractor, prospective Contractor or subcontractor and their facility(ies) have the capability to protect the Classified Information adequately.

12.6.2. Grant a security clearance to the facility(ies), if appropriate.

12.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.

12.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this Agreement.

12.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

12.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Agreement.

12.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

12.8. For any facility wherein Classified Information or material is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively

the responsibilities for safeguarding at such facility the information or material pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information or material involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

12.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project.

12.10. Information or material provided or generated pursuant to this Agreement may be classified as high as SECRET. The existence of this Agreement is Unclassified and the contents are Unclassified.

ARTICLE XIII

THIRD PARTY SALES AND TRANSFERS

13.1. The Parties shall not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired or produced Project Equipment, or any item produced either wholly or in part from RAM GMWS Project Foreground Information to any Third Party without the prior written consent of the other Party. Furthermore, neither Party shall permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Party. Such consent shall not be given unless the government of the intended recipient consents in writing with the Parties that it shall:

- 13.1.1. not retransfer, or permit the further retransfer of, any equipment or information provided; and
- 13.1.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Parties.

13.2. A Party shall not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Party to any Third Party without the prior written consent of the Party which provided such equipment or information. The providing Party shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

13.3. Consent for Third Party sales and transfers of Project Foreground Information or jointly acquired Project Equipment shall not be withheld except for reasons of foreign policy, national security, or national laws. No Party shall refuse approval of a sale or transfer to a Third Party when it would be willing to sell or transfer such equipment or information to the same Third Party.

13.4. Subject to national laws, regulations, and policy, the Parties agree that Sales and Transfers of the RAM Block 1 and Block 1 HAS Upgrade GMWS may be executed via a direct commercial sale or on a government to government basis. Requests for a Third Party sale and transfer, either via a direct commercial sale or on a government to government basis, will be considered by the Parties on a case by case basis.

13.5. Sales or transfers of equipment developed, or Project Foreground Information generated under this Agreement may be subject to a levy. Prior to any such sale or other transfer, the amount of any levy and the procedure for assessing such levy will be determined by the Parties and will be covered appropriately in the Contracts/subcontracts. However, either Party may reduce or waive recovery of its share of levy in accordance with its national laws, regulations, and practices. Levies recovered by the Parties will be distributed between them as determined by the Parties, taking into account any Party's reduction or waiver of such recovery.

ARTICLE XIV

LIABILITY AND CLAIMS

14.1. For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution and for the benefit of the Project, the following provisions shall apply.

14.2. With the exception of claims for loss of or damage to Project Equipment under Article VIII (Project Equipment), each Party waives all claims against the other Party for injury to or death of its military or civilian personnel and for damage to or loss of its property (including jointly acquired property) caused by such personnel (which do not include Project Contractors) of that other Party. If, however, such injury, death damage or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Party's personnel, the cost of any liability shall be borne by that Party alone.

14.3. Claims from any other persons for injury, death, damage or loss of any kind shall be processed by the most appropriate Party, as determined by the Parties. Any costs determined to be owed the claimant shall be borne by the Parties in proportion to their financial contributions. If, however, such injury, death damage or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Party's personnel, the cost of any liability shall be borne by that Party alone.

14.4. In the case of damage caused to or by jointly acquired property of the Parties, where the cost of making good such damage is not recoverable from other persons, such cost shall be borne by the Parties in proportion to their financial contributions.

14.5. Claims arising under any Contract awarded pursuant to Article VII (Contracting Provisions) shall be resolved in accordance with the provisions of the Contract. The Parties shall not indemnify Contractors against liability claims by any other persons. However, in exceptional circumstances (e.g., involving certain nuclear activity or other unduly hazardous activity where the cost of insurance is excessively high), the Parties may consider whether to indemnify Contractors against liability claims by any other persons.

ARTICLE XV

PARTICIPATION OF ADDITIONAL PARTIES

15.1. It is recognized that other national defense organizations may wish to join the Project.

15.2. Mutual consent of the Parties shall be required to conduct discussions with potential additional Parties. The Parties shall discuss the arrangements under which another Party might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure shall be in accordance with Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information), Article XII (Security), and Article XIII (Third Party Sales and Transfers).

15.3. The Parties shall jointly formulate the provisions under which additional Parties might join. The addition of new Parties to the Project shall require amendment of this Agreement by the Parties.